Statement
of the Connecticut Title Insurance Industry

Insurance and Real Estate Committee

March 4, 2014

In support of **Raised Bill Number 277- AN ACT CONCERNING THE ISSUANCE OF CLOSING PROTECTION LETTERS.**

The title insurance coalition is led by the American Land Title Association and includes title insurance companies that provide title coverage to more than 90% of Connecticut's real estate transactions. This bill will allow title insurance companies to provide better protections to the citizens of Connecticut as they undertake what is often the largest financial transaction made by a typical family, the purchase of a home. This Bill will require that lenders' are charged for Closing Protection Letters (CPL) and that purchasers or refinancers of the financed Connecticut residential property receive the benefit of this protection at no additional charge. By charging a CPL fee title insurers will enhance their financial strength by recouping the costs associated with the current system of providing a similar protection to lenders, but not charging a fee for the protection. The increased financial strength will in turn support the solvency of Connecticut's title insurers.

Summary

This Bill will require a title insurance company to issue a CPL, sometimes also called an "insured closing letter," to the 1-4 Family real estate buyer, borrower, lessee, and/or lender that is a party to a transaction in which a title insurance policy will be issued by the same title insurance company. The Bill requires that the form of the CPL and its corresponding fee be filed with and approved by the Connecticut Department of Insurance. The Bill establishes a minimum filed fee of $50.00 shall be a flat fee for the protection of the buyer/borrower/lessee and/or lender. The fee is not subject to any agreement requiring a division of fees with title insurance agents.

Definition of Closing Protection Letter

A CPL is a contract between the title insurance company and the 1-4 Family real estate buyer(s), borrower(s), lessee(s), or lender(s) that indemnifies against actual loss of settlement/closing funds caused by the following acts of a policy issuing title insurance agent or approved settlement service provider:

1. Fraud, theft or misappropriation of settlement funds in connection with a transaction, but only to the extent that the theft relates to the status of the title to an insured interest in land or to the validity, enforceability, or priority of the lien of the mortgage on an insured interest in land.

2. Failure to comply with the written closing instructions when agreed to by the settlement agent or title agent, but only to the extent that the failure to follow the instructions relates to the status of the title to an insured interest in land or the validity, enforceability, or priority of the lien of the mortgage on an insured interest in land.

Origin of the Closing Protection Letter

The agency-principal relationship between a title insurance company and a policy issuing agent or approved attorney is limited to the issuance of a title insurance policy, and such relationship does not extend to escrow or closing functions. The CPL was developed as an accommodation to lenders who wanted protection against the settlement/closing agent's fraudulent actions or failure to comply with the lender's closing instructions. A lender wanting a title insurance company to indemnify it against its actual loss arising from the settlement/closing agent's failure to properly handle their funds and documents must contract separately with the title insurance company for this additional protection through a CPL(the statutory definition of title premium in most states typically does not address all CPL risk). The coverage under the CPL is limited as set forth above and is also subject to Conditions and Exclusions.

Need for Closing Protection Letter Legislation

This legislation is needed to confirm that title insurance companies are authorized to issue the protection provided by a CPL, to protect consumers by ensuring that a CPL issued to a lender will also protect the consumer for no additional fee, and help bolster the financial stability of title underwriters doing business in the state and allow them to recoup the administrative costs associated with the preparation and proper administration of CPLs.

In Connecticut, title insurance companies are authorized to issue only a single line of insurance (monoline) relating to the title to real estate. The Connecticut Department of Insurance requires that title insurance forms and rates be filed and approved by the Department. The CPL has been provided at no fee as an accommodation to lenders and only in conjunction with a title insurance policy. Although the Connecticut Department of Insurance is aware that title insurance companies have been providing this type of indemnity coverage in conjunction with title insurance policies, since no fee has been charged, the Department has not required that the CPL form be filed and approved. This legislation will clarify that title insurance companies are authorized to provide the indemnity coverage of the CPL.

Consumer Protection

In Connecticut, the CPL provides additional protection that is typically requested by the lender. However, the language of the CPL automatically extends the protection to the lender's 1-4 Family, borrower(s), and in the proposed legislation it will protect buyer(s) or lessee(s) as well, as long as they are also protected by the underwriter's title insurance policy. This legislation will require underwriters to charge a flat fee for the protection as it applies to all parties to the transaction, so that the cost for providing protection to the buyer(s), borrower(s), or lessee will cost no more than providing the protection to the lender. This consumer protection aspect of the CPL will remain in place.

Underwriter Solvency

This legislation addresses an issue of concern relating to escrow fraud, underwriter insolvency. With the recent downturn in the real estate market and increased defalcations (escrow theft) by settlement/closing agents, CPL claims and losses are on the rise. Underwriters nationwide have paid out millions of dollars in claims in connection with escrow fraud and spent millions developing the IT technology necessary to produce, track, and retain copies of CPL's. This legislation will help bolster the financial stability of title underwriters doing business in the state and allow them to recoup the administrative costs associated with the preparation and proper administration of CPLs.

<u>Recent Underwriter Insolvencies, Receiverships, Impairments</u>

In 2008 five underwriters were declared insolvent, impaired, or ceased writing new policies: Guarantee

Title Ins. Co. (MO), Guarantee Title and Trust Co. (OH), Lawyers Title Insurance Co. (NE), Commonwealth Land Title Ins. Co. (NE), Southern National Title Ins. Co. (MS).

More recently:
2009: Attorney's Title Ins. Fund, (FL) the Nation's 5th largest insurer had its COA revoked
2009: National Title Ins. Co. (FL) was placed into receivership
2010: Titledge Ins. Co. of NY, (NY) was declared insolvent
2011: Washington Title Ins. Co., (NY) was declared insolvent
2011: Southern Title Ins. Co., (VA) was declared insolvent
2012: New Jersey Title Ins. Co., (NJ) was declared insolvent
2012: K.E.L. Title Ins. Co., (FL) was placed into receivership

Closing Protection Letter Legislation in Other States

Currently, nearly every state allows title insurance companies to offer CPLs Twenty-one states allow underwriters to charge for CPLs, including Alabama, Arkansas, Washington D.C., Delaware, Georgia, Illinois, Indiana, Kentucky, Louisiana, Maine, Mississippi, Missouri, North Carolina, Nebraska, New Jersey, Ohio and Pennsylvania, South Carolina, Tennessee, Virginia, West Virginia. The legislation in some states, such as Illinois, not only allows the title insurance company to charge for the CPL, but mandates its issuance.

Key Points:

- CPLs have been used in Connecticut for many years in conjunction with the issuance of title insurance policies.
- CPLs protect lenders and consumers (buyers. borrowers, lessees) from loss arising from fraud, theft and failure to follow written closing instructions by the settlement/closing agent.
- Recently, title insurance companies have faced increased losses under CPLs due to agent theft of escrow funds and failure to follow lender closing instructions.
- This legislation will bolster the financial stability of title underwriters by allowing them to recoup the administrative costs associated with the preparation and proper administration of CPLs.
- The Department of Insurance acknowledges the everyday use of CPLs in Connecticut, but legislation is needed as the coverage provided through CPLs is not contemplated by existing Connecticut mono-line statutes.
- This legislation will allow title insurance companies to file the CPL form and fee with the Connecticut Department of Insurance for approval.
- This legislation will establish a minimum fee for the CPL.
- CPLs will be mandatory on all non-cash residential (1-4 Family) and institutional lending transactions
- This legislation will require that the fee charged for the CPL is a flat fee which covers both lenders and consumers (buyers. borrowers, lessees).
- CPLs are commonly used in 48 states and many states now have legislation relating to CPLs.
- The American Land Title Association (ALTA), the title industry's national trade association, adopts standard CPL forms.

The Title Insurance Industry Coalition would ask for the Insurance and Real Estate Committee's support of Raised Bill No. 277 with the suggested changes attached (in CAPS).

Thank you for your consideration.

Proposed substitute:

SB 277 AN ACT CONCERNING THE ISSUANCE OF CLOSING PROTECTION LETTERS.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

Section 1. Section 38a-404 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2014*):

(a) No person subject to sections 38a-400 to 38a-425, inclusive, shall engage in activities prohibited to corporations under section 38a-45, except that such persons may guarantee their obligations and the obligations of their agents and their affiliates in the normal course of business by issuing closing protection letters.

(b) A CLOSING PROTECTION LETTERS MUST BE ISSUED TO A BANK OR LENDING INSTITUTION IN CONNECTION WITH THE ISSUANCE OF ANY LOAN POLICY INSURING THE INTEREST OF SUCH BANK OR LENDING INSTITUTION IN A BUILDING INTENDED FOR RESIDENTIAL OCCUPANCY CONTAINING FOUR DWELLING UNITS OR LESS, INCLUDING A RESIDENTIAL UNIT IN A CONDOMINIUM, COOPERATIVE OR PLANNED COMMUNITY AND ANY OTHER TYPE OF ONE-TO-FOUR FAMILY RESIDENCE.

(C) NOTHING IN THIS SECTION SHALL PROHIBIT THE ISSUANCE OF A CLOSING PROTECTION LETTER TO (1) A LENDER, IN CONNECTION WITH THE ISSUANCE OF A LOAN TITLE POLICY INSURING SUCH LENDER'S INTEREST IN ANY OTHER TYPE OF RESIDENTIAL OR COMMERCIAL PROPERTY, (2) A BORROWER, IN CONNECTION WITH THE ISSUANCE OF A LOAN TITLE POLICY INSURING THE LENDER'S INTEREST IN ANY TYPE OF RESIDENTIAL OR COMMERCIAL PROPERTY OWNED BY SUCH BORROWER, OR (3) ANY OWNER IN CONNECTION WITH THE ISSUANCE OF AN OWNER'S POLICY INSURING SUCH OWNER'S INTEREST IN ANY TYPE OF RESIDENTIAL OR COMMERCIAL PROPERTY.

(d) A title insurer SHALL impose a fee for the issuance of a closing protection letter OF NOT LESS THAN $25 AND NO MORE THAN $50.

Sec. 2. Section 38a-415 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2014*):

(a) Nothing in sections 38a-400 to 38a-425, inclusive, shall be construed as prohibiting the division of premiums and charges between or among a title insurer and its title agent, two or more title insurers and their title agents, two or more title insurers, one or more title insurers and one or more title agents, or two or more title agents, provided such division of premiums and charges does not constitute (1) an unlawful rebate or inducement under the provisions of said sections or (2) payment of a forwarding fee or finder's fee.

(b) Notwithstanding subsection (a) of this section, (1) for any title insurance policy issued after October 1, 1990, no title insurer shall pay to any title insurance agent or permit such agent to retain any amount exceeding sixty per cent of the gross premium for any policy of the title insurer issued by such agent. The maximum commission to a title insurance agent shall not be increased directly or indirectly by an insurer providing anything of value, including services, to

an agent for less than the actual cost or fair market value, and (2) for any closing protection letter issued on or after October 1, 2014, for which a title insurer receives a fee pursuant to subsection (d) of section 38a-404, as amended by this act, no title insurer shall pay to any title insurance agent or permit such agent to retain any amount of such fee.

Sec. 3. Section 38a-421 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2014*):

(a) A title insurer shall file with the commissioner all forms it proposes to use in this state, including (1) title insurance policies, including standard form endorsements, [and] (2) commitments, binders or any other reports issued prior to the issuance of a title insurance policy, and (3) closing protection letters. If the commissioner finds in [his] the commissioner's review of a filing that it does not violate section 38a-422, [he] the commissioner shall approve the form within thirty days of filing. Prior to such approval, the commissioner may conduct public hearings with respect to the filing. Filings that the commissioner has failed to approve or disapprove within thirty days of filing shall be deemed approved. Upon notice to the insurer, the period for review of a form filing may be extended for an additional thirty days.

(b) A title insurer need not file reinsurance contracts and agreements.

(c) No title insurer may issue, directly or through a title agent, any policy after October 1, 1990, unless the policy form has been approved pursuant to this section. The commissioner may provide by regulation for interim use of forms in effect prior to October 1, 1990.